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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,817	12/21/2001	Yukihiro Fujieda	217411US0 XPCT	4758
22850	7590	10/21/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			BRUENJES, CHRISTOPHER P	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/926,817

Applicant(s)

FUJIEDA ET AL.

Examiner

Christopher P Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-26, 28-30, 32-51, 53-55 and 57-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-26, 28-30, 32-51, 53-55 and 57-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

REPEATED REJECTIONS

1. The 35 U.S.C. 103 rejections of claims 18-26, 28-30, 32-51, 53-55, and 57-62 over Kodama in view of Hotta are repeated for the reasons previously of record in the Office Action mailed April 1, 2004, Pages 4-9 Paragraph 7.

ANSWERS TO APPLICANT'S ARGUMENTS

2. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 18-26, 28-30, 32-51, 53-55, and 57-62 over Kodama in view of Hotta have been fully considered but they are not persuasive.

In response to Applicant's argument that Kodama teaches a film and not a tube, the Examiner agrees that Kodama fail to explicitly teach forming a tube from the multilayer laminate. However, the rejection of the claims is over Kodama and Hotta taken as a whole. Hotta teaches that the same composition, which is a composition similar to the composition of Kodama, is used to form sheets, such as the sheets taught by Kodama, or medical tubes. Hotta further teaches that the article formed from the same composition, whether it is a sheet or tube, has the same properties. Therefore, it would have been obvious to

one having ordinary skill in the art at the time of the applicant's invention that the composition of Kodama which is taught to be useable in a medical environment would also be used to form a tube having the same properties as the laminate before forming into a tube, as taught by Hotta, who teaches that the same composition has the same properties when formed into a tube and sheet. The multilayered tube of Kodama and Hotta taken as a whole would inherently have the same properties as the instant invention because it is formed from the same composition.

In response to Applicant's argument that Hotta fails to disclose a multilaminate tube, the Examiner agrees that Hotta fails to explicitly teach forming a multilaminate tube. However, the rejection of the claims is over Kodama and Hotta taken as a whole. Hotta teaches that the same plastic composition, which is similar to the composition of Kodama, is used to form sheets and tubes both of which have the same properties because they are formed from the same composition.

In response to Applicant's argument that the functional properties of the claimed tubes are not inherent to the product made from the multilayer laminate of Kodama. The properties of the tube would be inherently present in the multilayered tube of Kodama and Hotta taken as a whole because the tube is formed

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from the same composition and an article made from the same composition inherently has the same properties.

In response to Applicant's argument that the tube of Kodama and Hotta combined fails to teach the newly added properties of claims 18 and 41, Kodama teaches that resin (I) forms a thicker substrate than resin (II). Because resin (II) is formed from the same composition it would inherently be capable of connecting to another tube or article by hot melt bonding, solvent bonding or adhesive bonding. Note the limitation capable of does not require the bonding but merely the ability to bond by one of the three methods claimed. One of ordinary skill in the art taking the teachings of Kodama and Hotta as a whole would have recognized that a multilayered tube is formed to retain its shape, or not kink, even at high temperatures, as taught by Hotta in column 2, lines 10-25. Therefore, through routine experimentation it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to form the tube of Kodama and Hotta with the thickness needed to form an arc having a radius of 20 mm without kinking, because Hotta teaches that the tube must retain its shape or not kink at high temperatures.

In response to Applicant's argument that the copolymer of Kodama includes random copolymer along with the block copolymer

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and the present invention only includes block copolymers. The present claims are written in open language and would include the random copolymer within the scope of the claims. With regards to the fact that because the laminate of Kodama includes the random copolymer it could not have the same peeling strength, the arguments of counsel cannot take the place of evidence in the record. See MPEP 2145(I). In this case there is no evidence in the record that the addition of a random copolymer of the same monomers as the block copolymer it is added to, would substantially change the peeling strength, so that the article no longer has a peeling strength within the ranges claimed.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772
CPB *CPB*
October 13, 2004

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

10/14/04